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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

NATIONAL COALITION FOR MEN; JAMES LESMEISTER, Individually and on behalf of others similarly situated; and ANTHONY DAVIS, individually and on behalf of others similarly situated,

PLAINTIFFS,

v.

SELECTIVE SERVICE SYSTEM; LAWRENCE G. ROMO, as Director of SELECTIVE SERVICE SYSTEM; and DOES 1 through 50, Inclusive,

DEFENDANTS.

Civil Action No. 4:16-cv-03362

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Honorable Gray H. Miller
Action Filed: April 4, 2013

Plaintiffs National Coalition For Men (hereinafter "NCFM"), James Lesmeister (hereinafter "Lesmeister"), and Anthony David ("Davis") (collectively hereinafter "Plaintiffs"), bring this complaint against Defendants Selective Service System (hereinafter

"SSS") and its Director Lawrence G. Romo (collectively hereinafter ("Defendants"). Plaintiffs request injunctive and declaratory relief for Defendants to treat women and men equally by requiring both women and men to register for the U.S. military draft.

PARTIES

1. Plaintiff NCFM is a non-profit, 501(c)(3) educational and civil
2 rights corporation organized under the laws of the State of
3 California and of the United States.
4. NCFM is registered with the Combined Federal Campaign for non-
5 profit organizations.
6. NCFM was established in 1976 to examine how sex discrimination
7 adversely affects males in military conscription, child custody
8 laws, parenting rights, domestic violence services, family law,
9 paternity laws, criminal sentencing, public benefits, education,
10 occupations that are not traditionally male (nursing, school
11 teachers, etc.), and other areas.
12. NCFM assisted the California Legislature in enacting legislation
13 to protect men from paternity fraud, and helped overturn
14 unconstitutional laws that discriminated against male victims of
15 domestic violence in California in *Woods v. Horton* (2008) 167
16 Cal.App.4th 658. NCFM members were the prevailing appellants and
17 attorney in the landmark California Supreme Court case of
18 *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, which held
19 that women, people of color, ~~gays~~ and lesbians, and other groups

1 that California businesses discriminated against based on
2 protected personal characteristics did not have to first assert
3 their right to equal treatment to an offending business in order
4 to have standing to sue for unlawful discrimination under
5 California's Unruh Civil Rights Act.

6 5. NCFM has associational standing because some NCFM members,
7 including Plaintiff Davis, would otherwise have standing to sue in
8 their own right, the interests NCFM seeks to protect are germane
9 to NCFM's purpose and neither the claim asserted, nor the relief
10 requested, requires the participation of individual NCFM members
11 in this lawsuit.

12 6. Some of NCFM's members are males ages 18-25 or who will be age 18-
13 25 at some time relative to this lawsuit and the relief it seeks,
14 are harmed by or subject to the sex-discriminatory registration
15 requirements, are United States citizens, are not members of the
16 military or students at military academies or otherwise exempt
17 from the draft, and support equal treatment of males and females,
18 and some NCFM's members have or are likely to have male children
19 or loved ones who meet the criteria.

20 7. Plaintiff Lesmeister is a male age 18-25, a resident and U.S.
21 citizen residing near Houston, Texas, is in the age group required
22 by Defendants to register for the military draft and has recently
23 registered for the military draft as is required of him as a male,
24 is harmed by or subject to the sex-discriminatory registration

1 requirements, is not a members of the military or a student at
2 military academies or otherwise exempt from the draft, and he
3 supports equal treatment of males and females.

4 8. Davis is a male age 18-25, a resident and U.S. citizen residing in
5 San Diego, California, is in the age group required by Defendants
6 to register for the military draft and has recently registered for
7 the military draft as is required of him as a male, is harmed by
8 or subject to the sex-discriminatory registration requirements, is
9 not a members of the military or a student at military academies
10 or otherwise exempt from the draft, and he supports equal
11 treatment of males and females. Davis is a member of NCFM.
12

13 9. Defendant SSS is an independent agency within the Executive Branch
14 of the Federal Government of the United States of America. The SSS
15 collects and maintains information on men potentially subject to
16 military conscription. Male U.S. citizens and male immigrant non-
17 citizens between the ages of 18 and 25, are all required by law to
18 register with the SSS within thirty days of their 18th birthdays
19 and must notify the SSS within ten days of any changes to any of
20 the information they provided on their registration cards, such as
21 a change of address. A 2010 report by the General Accounting
22 Office estimated the SSS's registration rate at 92%, with the
23 names and addresses of over 16.2 million men on file. The SSS
24 provides the names of all registrants to the Joint Advertising
25 Marketing Research & Studies ("JAMRS") program for inclusion in
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1 the JAMRS Consolidated Recruitment Database. The names are
2 distributed to various government agencies for recruiting purposes
3 on a quarterly basis.

4 10. Defendant, Lawrence G. Romo, is Director of the SSS. The Director
5 of SSS is appointed by the President of the United States of
6 America and confirmed by the Senate.
7

8 11. Defendants DOES 1 through 50 are sued as fictitious entities at
9 this time and will be added to this Complaint by amendment when
10 their true names are ascertained.
11

12 12. Plaintiffs are informed and believe and thereon allege that each
13 of the Defendants is responsible and liable for the illegal and
14 unconstitutional acts alleged herein.
15

16 13. There is no other civil action between these parties arising out
17 of the same transaction or occurrence as alleged in this Complaint
18 pending in this Court, nor has any such action been previously
19 filed and dismissed or transferred after having been assigned to a
20 judge.
21

JURISDICTION

22 14. Plaintiffs bring this action under the Fifth Amendment of the
23 United States Constitution to challenge Defendants' sex
24 discrimination against males in Defendants' Selective Service
25 System, which requires only males register for the draft into the
26 branches of the U.S. military.
27

15. This Court has jurisdiction pursuant to the following statutes:

a. 28 U.S.C. § 1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States.

b. 28 U.S.C. § 1343 (3) and (4), which give district courts original jurisdiction over actions to secure civil rights extended by the United States government.

VENUE

16. The case was originally filed in the Central District Court of California, because NCFM's national office is in California and Plaintiffs' attorney resides in Los Angeles, California.

17. The Central District Court of California dismissed NCFM without prejudice on a Motion to Dismiss, and transferred to case to the Southern District Court of Texas, Houston Division, because that is where Lesmeister, whom the court found has standing, resides.

18. Venue is proper under 28 U.S.C. § 1331(b) because the events giving rise to this Complaint occurred in this District, or a substantial part of property that is the subject of the action is situated in this District.

19. Nonetheless, Plaintiffs assert that the case would be more conveniently heard in California, because NCFM's national office is in San Diego, California, and Plaintiffs' attorney resides in Los Angeles, California, only two hours away from San Diego.

PROCEDURAL BACKGROUND

- 1 20. Plaintiffs re-allege each allegation set forth above.
- 2 21. In the 1981 U.S. Supreme Court decision of *Rostker v. Goldberg*,
3 453 U.S. 57 (1981), a group of men asserted the sex discrimination
4 in the SSS violated their rights to Equal Protection under the
5 Fifth Amendment to the United States Constitution. In a sharply
6 divided decision with a vigorous dissent written by Justice
7 Thurgood Marshall, the majority of the Justices ruled against the
8 men on the basis that women were excluded from combat, and
9 therefore, men and women were not similarly situated.
- 10 22. On January 24, 2013 Secretary of Defense Leon E. Panetta and
11 Chairman of the Joint Chiefs of Staff Martin E. Dempsey issued a
12 Memorandum that officially rescinded the 1994 ban on women in
13 combat (hereinafter, "2013 Memorandum").
- 14 23. The 2013 Memorandum gave the military departments until May 15,
15 2013 to submit "detailed plans for the implementation of this
16 directive" and directed that integration of women into combat
17 positions be completed "as expeditiously as possible" and no later
18 than January 1, 2016.
- 19 24. The 2013 Memorandum further directed that any recommendations to
20 keep women out of certain units must be personally approved by the
21 Chairman and by the Secretary of Defense and must be "narrowly
22 tailored" and "based on rigorous analysis of factual data."

1 25. As the 2013 Memorandum itself notes, many changes had already
2 occurred between the 1981 *Rostker* decision and the 2013
3 Memorandum. For example, page one of the 2013 Memorandum states
4 in February 2012 the military opened over 14,000 positions
5 previously closed to women, and that, as of January 24, 2013,
6 thousands of women have served alongside men in Iraq and
7 Afghanistan and were exposed to hostile enemy action.

8
9 26. Therefore, the sole legal basis for requiring only males to
10 register with the SSS for the military draft no longer applies,
11 and Defendants should now treat men and women equally by either
12 requiring both men and women to register, or by ending the SSS.

13
14 27. On April 4, 2013, Plaintiffs filed this lawsuit for injunctive,
15 declaratory, and other relief ordering Defendants to rescind the
16 MSSA's male-only registration requirement, either by requiring
17 both sexes to register for MSSA or by rescinding the MSSA for both
18 sexes, on the ground that the gender-specific registration
19 requirement violates the constitutional right to equal protection.

20
21 28. On June 19, 2013, Defendants filed a Motion to Dismiss under
22 Federal Rule of Civil Procedure 12(b)1, 12(b)3, and 12(b)6,
23 arguing, *inter alia*, that the case is not ripe because the repeal
24 of the ban on women in combat has not been fully implemented and
25 it is not clear whether all military branches will allow women in
26 combat, and that Lesmeister and NCFM lack standing to sue.

29. On July 29, 2013 the Central District Court of California dismissed the action on the sole ground of ripeness.

30. Lesmeister and NCFM appealed to the Ninth Circuit Court of Appeals.

31. On December 4, 2015, Defendants wrote a letter to the Ninth Circuit Court of Appeals stating, in pertinent part:

on December 3, 2015, as required by 10 U.S.C. § 652 and 10 U.S.C. § 6035, the Secretary of Defense notified Congress that the Department of Defense (DoD) intends to assign women to previously closed positions and units across all Services and U.S. Special Operations Command.

32. Said letter attached a December 3, 2016 letter from the Department of Defense to Joseph Biden, President of the Senate, indicating that the Department of Defense intends to "open all previously closed positions" to women "across all services."

33. On February 19, 2016, the Ninth Circuit Court of Appeals reversed the Central District of California's order, stating in part:

The district court's decision was largely premised on the fact that the Department of Defense has been engaged in a multi-year process of integrating women into formerly closed positions, and it was unclear the extent to which these positions would be opened. Much of that uncertainty has passed: as the government has noted, the Secretary of Defense recently announced that the military "intends to open all formerly closed positions" to women. Even if some uncertainty remains as to the full extent to which women will end up serving in combat roles, that does not render the Coalition and Lesmeister's claims unripe.

34. The Ninth Circuit further stated:

We note the Selective Service is wrong to argue that the Coalition and Lesmeister lack standing because their alleged equality injuries would not be redressed if the burdens they challenge were extended to women.

35. The Ninth Circuit declined to rule on the other challenges to standing that were based on alleged deficiencies in the Complaint.

36. On remand, Defendants filed another Motion to Dismiss in which they challenged Plaintiffs' standing.

37. On November 9, 2016, the Central District of California ruled that Lesmeister has standing, but NCFM does not have associational standing because NCFM did not name any members with standing.

38. The Central District Court of California then transferred venue to the Southern District Court of Texas, Houston Division, where the only remaining Plaintiff, Lesmeister, resides.

GENERAL ALLEGATIONS

39. Plaintiffs re-allege each allegation set forth above.

40. Under the MSSA, male U.S. citizens and male immigrant non-citizens between the ages of 18 and 26 are required by law to register with the MSSS within 30 days of their 18th birthdays. 50 U.S.C. § 453(a).

41. After they register, men must notify the SSS within 10 days of any changes to any of the information provided on the registration

1 card, including a change of address, until January 1 of the year
2 they turn 21 years of age.

3 42. Failure to comply with the MSSA can subject a man to five years in
4 prison, a \$10,000 fine, and denial of federal employment or
5 student aid. 50 U.S.C. § 462(a).

6 43. Within the past three years, Defendants have been and are
7 enacting, implementing, and/or administering laws, rules, and
8 public policies, which discriminate against males by requiring
9 only males to register for the draft under the SSS program.

10 44. The above-referenced discriminatory laws and policies violate the
11 rights of Plaintiffs and other qualifying men in the United States
12 under the 5TH Amendment of the United States Constitution.

13 45. Men failing to register with SSS can be fined \$250,000, sentenced
14 to five years in prison, and be disqualified from a number of
15 federal and state benefits including: jobs, financial aid,
16 citizenship, and job training.

17 46. The U.S. Supreme Court, in *Frontiero v. Richardson*, 411 U.S. 677
18 (1973), ruled that the Equal Protection Clause of the United
19 States Constitution requires the U.S. military to provide its
20 female members with the same housing and medical benefits as it
21 provides its male members. *Frontiero* discusses America's long and
22 unfortunate history of sex discrimination, *Id.* at 684 - 687, which
23 NCFM and many other equal rights organizations seek to end.
24 Justice William J. Brennan Jr.¹¹ in announcing the judgment of the
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1 Court, compared the military's unequal treatment of men and women
2 regarding housing and medical benefits to be another example of
3 this country's unfortunate tradition of treating people unequally
4 based on their sex, finding that "Traditionally, such
5 discrimination was rationalized by an attitude of "romantic
6 paternalism" which, in practical effect, put women, not on a
7 pedestal, but in a cage." *Id.* at 684.

9 **DECLARATORY RELIEF**

- 10 47. Plaintiffs re-allege each allegation set forth above.
11 48. There exists an actual, present, and justiciable controversy
12 between Plaintiffs and Defendants concerning the rights of
13 Plaintiffs and the duties of Defendants concerning the conduct
14 described herein.
15 49. This controversy is ripe for judicial decision, and declaratory
16 relief is necessary and appropriate so the parties may know the
17 legal obligations that govern their present and future conduct.

20 **COUNT ONE: VIOLATION OF FIFTH AMENDMENT OF THE UNITED STATES**

21 **CONSTITUTION**

- 22 50. Plaintiffs re-allege each allegation set forth above.
23 51. The above-mentioned conduct by Defendants violates the rights of
24 Plaintiffs to equal treatment based on sex under the Fifth
25 Amendment of the United States Constitution.

1
PRAYER

2 Therefore, Plaintiffs pray as follows for:

- 3 1. Injunctive relief ordering Defendants to end the sex-based
4 discrimination in its military draft registration program and
5 to treat men and women equally.
- 6 2. Declaratory relief regarding the respective rights of
7 Plaintiffs and all defendants as set forth in this Complaint;
- 8 3. Attorney fees and costs; and,
- 9 4. Any other relief that the Court deems just.

10
JURY DEMAND

11 Plaintiffs demand a trial by jury on all causes of action so
12 triable.

13 Respectfully Submitted.

14 Law Office of Marc E. Angelucci

15 Date: 1/26/17

16 By: //Marc E. Angelucci //
17 Marc E. Angelucci, Esq.
18 Attorney for Plaintiffs, National
19 Coalition For Men, James Lesmeister,
20 and Anthony Davis